

**FILED**

**AUG 08 2013**

Clerk, U.S. District Court  
District Of Montana  
Helena

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**BILLINGS DIVISION**

RICHARD D. HINMAN,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,

Respondents.

CV 13-46-BLG-SEH

ORDER

United States Magistrate Judge Carolyn Ostby entered her Findings and Recommendation<sup>1</sup> on July 8, 2013. Petitioner filed objections on July 15, 2013.<sup>2</sup> The Court reviews *de novo* findings and recommendations to which objection is made. 28 U.S.C. § 636(b)(1).

---

<sup>1</sup> Document No. 6.

<sup>2</sup> Document No. 7.

Petitioner has also filed two Notices of Appeal.<sup>3</sup> Generally, the filing of a notice of appeal divests a district court of jurisdiction over those aspects of the case involved in the appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). “This transfer of jurisdiction . . . is not effected, however, if a litigant files a notice of appeal from an unappealable order.” *Estate of Conners by Meredith v. O’Connor*, 6 F.3d 656, 658 (9th Cir. 1993); *Brown v. United States Postal Serv.*, 860 F.2d 884, 886 (9th Cir. 1988); *Ruby v. Sec’y of the Navy*, 365 F.2d 385, 389 (9th Cir. 1966) (en banc). No finality attaches to Judge Ostby’s Findings and Recommendation unless and until they are adopted by this Court. Accordingly, the Notices of Appeal will be disregarded as premature, and this Court will proceed as if they had not been filed.

Upon *de novo* review of the record, I find no error in Magistrate Judge Ostby’s Findings and Recommendation and adopt it in full.

ORDERED:

1. The Petition<sup>4</sup> is DISMISSED as an authorized second petition under 28 U.S.C. § 2244(b).
2. A certificate of appealability is DENIED.

---

<sup>3</sup>Document Nos. 8 & 9.

<sup>4</sup> Document No. 1.

3. The Clerk is directed to enter judgment accordingly.

DATED this 8<sup>th</sup> day of August, 2013.

A handwritten signature in cursive script, reading "Sam E. Haddon", written over a horizontal line.

SAM E. HADDON

United States District Judge